RWG-mtc

February 23, 1949

Honorable Charles Elmore Cropley
Clerk, United States Supreme Court
Washington, D. C.

Re: U. S. ex rel. May Johnson v. Watkins,
No. 506

Dear Mr. Cropley:

One of the issues in the above-entitled case is whether a board of special inquiry in alien exclusion proceedings must be composed of examiners appointed in accordance with Section 11 of the Administrative Procedure Act. In the Government's brief in opposition to certiorari (p. 23), we asserted that "Petitioner may not attack in this Court the judgment of the court below on grounds which were not presented to that court," and in Footnote 11 we quoted from petitioner's printed brief in the court below her express concession that Section 11 had no application to special boards of inquiry.

Mr. Gunther Jacobson, counsel for petitioner, has since advised me, and the United States Attorney confirms, that on argument in the court below petitioner withdrew this concession and filed with that court a supplemental typewritten brief in which she contended that Section 11 of the Administrative Procedure Act is applicable to boards of special inquiry.

In preparing the brief in opposition, this office was not aware that petitioner had withdrawn the concession made in her printed brief in the court below. In fairness to the petitioner, we must now concede that the issue was litigated in the court below and, therefore, is properly raised in her petition for certiorari. Since the Government's brief in opposition also treats this issue on its merits, we are satisfied that the issue has been presented fully to the Court.

Sincerely yours,

Philip B. Perlman,
Solicitor General

cc: Mr. Gunther Jacobson
36 West 44th Street
New York 18, New York